

**Bill 42-22****Council District(s) All**

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**Mr. Jones (By Req.)**

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**Office of Budget and Finance**

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**Employees' Retirement System**

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Bill 42-22 makes several changes to the Employees' Retirement System. The County's actuary advised that the fiscal impact of these benefits will onset in FY 2024, with the respective increases to the County's FY 2024 ERS contribution as noted below. See Exhibit A.

First, the bill would require all new employees to join the System as of July 1, 2022, including the County Executive, County Council, part-time employees, and employees in the special employment category. Employees, other than sworn police and fire, who have attained the age of 55 when beginning employment with the County or a County agency retain the option to waive membership in the System. If an employee had previously elected not to join the System and becomes a merit system employee and has attained the age of 55, they would have the option to continue to refrain from joining the System. The County's actuary advised that the fiscal impact to the County of this change is minimal.

Second, the bill establishes a pension plan for judges of the Orphans' Court as mandated by S.B. 432, passed by the 2022 General Assembly, and requires such employees to contribute 13.85% of base pay to the System. The bill also provides the judges the option to purchase time as an Orphans' Court judge between January 1, 2022 and July 1, 2022 provided they complete the purchase within 180 days. The County's actuary advised that the fiscal impact of this benefit will increase the County's FY 2024 ERS contribution by \$19,000.

Third, the bill establishes a Plan B Back DROP for sworn firefighters and sworn police officers hired on or after July 1, 2007, and requires firefighters to contribute an additional 0.78% and sworn police officers to contribute an additional 1.30% of base pay. The Office advised that these new DROP programs were negotiated with and approved by the membership of the Baltimore County Professional Fire Fighters Association and of the Fraternal Order of Police, Lodge #4, respectively. The first DROP may begin on or after July 1, 2040 for firefighters and on or after

July 1, 2035 for sworn police officers. The Office advised that the new programs are designed to be revenue neutral to the County in the long-term through the additional employee contributions. The County's actuary advised that the fiscal impact of these benefits will increase the County's FY 2024 ERS contribution by \$68,000.

Fourth, the bill provides an Option 7 survivorship benefit to members on Pay Schedule VII, Police Supervisory, Management, and Confidential (SMC), who have completed at least 25 years of creditable service, and Pay Schedules V and VIII, Firefighters and Fire SMC, who have completed at least 25 years of creditable service (as amended). The new Option 7 language mirrors the Fraternal Order of Police, Lodge #4 language approved by the Council in Bill 48-21. The County's actuary advised that the fiscal impact of the addition of an Option 7 survivorship benefit to members on Pay Schedule VII will increase the County's FY 2024 ERS contribution by \$1,100. The County's actuary advised that the FY 2024 fiscal impact of the addition of an Option 7 survivorship benefit to members on Pay Schedule V and VIII to the County's ERS contribution is \$38,000 for Plan A and \$26,000 for Plan B.

Last, the bill clarifies or corrects several sections as follows:

- Clarifies that the pension benefit for correctional officers and deputy sheriffs applies only to those members who have reached 20 years of creditable service if hired prior to July 1, 2007 or 25 years of creditable service if hired on or after July 1, 2007;
- Corrects the vesting language in Section 5-1-203(9)(ii) for members hired on or after July 1, 2007 from 10 years of "membership" service to 10 years of "creditable" service (as amended) to agree with the termination benefit language in Section 5-1-230(b)(2);
- Clarifies the definition of active duty military service for members of the National Guard to align with the County's pre-existing policy that it only accepts active duty in the Maryland National Guard toward creditable service; and
- Removes obsolete language regarding refund of military contributions that had applied to members who purchased their military service time prior to 1977.

The Office advised that these clarifications/corrections have no fiscal impact.

Section 5-1-105 of the County Code states that for any retirement-related legislation submitted to the County Council, the Director of the Office of Budget and Finance shall attach a statement to the legislation on the date the bill is introduced providing the fiscal impact of the legislation for each fiscal year over the full actuarial amortization period for each associated actuarial accrued liability, including the resulting estimated increase to the actuarially determined employer

contribution to the System and the total impact on the actuarial accrued liability of the System, by employee group, as determined by the County's actuary. The Office advised that it could not comply with this Code requirement due to the time needed by the County's actuary to set up the models. However, the Office has subsequently provided this information.

With the affirmative vote of five members of the County Council, Bill 42-22 shall take effect July 1, 2022.

## Executive Summary

The Retirement Bill accomplishes the following purposes:

- Establishing a Plan B Back DROP for sworn firefighters hired on or after July 1, 2007 and requiring employees to contribute an additional 0.78% of base pay. The DROP is a look-back for 3 years and includes the DROP benefit as if the member retired 3 years prior, contributions during the DROP period, an interest credit of 5% per year based on the administrative procedures currently used, and any retiree COLAs after the first 12 months. To qualify for the DROP, a member needs 33 years of Qualifying Service. This new DROP program was negotiated with and approved by the membership of the Baltimore County Professional Fire Fighters Association. The new program is designed to be revenue neutral to the County through the additional employee contribution. The first DROP may begin on or after July 1, 2040.
- Establishing a Plan B Back DROP for sworn police officers hired on or after July 1, 2007 and requiring employees to contribute an additional 1.30% of base pay. The DROP is a look-back for 3 years and includes the DROP benefit as if the member retired 3 years prior, contributions during the DROP period, an interest credit of 5% per year based on the administrative procedures currently used, and any retiree COLAs after the first 12 months. To qualify for the DROP, a member needs 28 years of Qualifying Service. This new DROP program was negotiated with and approved by the membership of the Fraternal Order of Police, Lodge #4. The new program is designed to be revenue neutral to the County through the additional employee contribution. The first DROP may begin on or after July 1, 2035.
- Providing an Option 7 survivorship benefit to members on Pay Schedule VII, Police SMC, who have completed at least 25 years of creditable service. The new Option 7 language mirrors the Fraternal Order of Police, Lodge #4 approved by the Council in council bill 48-21.
- Providing an Option 7 survivorship benefit to members on Pay Schedules V and VIII, Firefighters, who have completed at least 25 years of creditable service. The new Option 7 language mirrors the Fraternal Order of Police, Lodge #4 approved by the Council in council bill 48-21.
- Establishing a pension plan for judges of the orphans' court as mandated by Maryland State Senate Bill 432 and requiring employees to contribute 13.85% of base pay. This Bill also provides the judges the option to purchase time as an orphans' court judge between January 1, 2022 and July 1, 2022 provided they complete the purchase within 180 days.
- Requiring all new employees to join the retirement system as of July 1, 2022, including the county executive, county council, part-time employees, and employees in the special employment category. Employees, other than sworn police and fire, who have attained the age of 55 when beginning employment with the County or a County agency retain the option to waive membership in the System. If an employee had previously elected not to join the System and becomes a merit system employee and has attained the age of 55, they would have the option to continue not to join the System.

### THE CLARIFICATIONS LISTED BELOW DO NOT ELIMINATE OR REDUCE ANY CURRENT BENEFITS:

- Clarifying the definition of active duty military service for members of the National Guard. This change clarifies that the County only accepts active duty in the Maryland National Guard toward creditable service. The County allows up to four years of creditable service for military time served prior to County employment. The County also allows an employee to purchase creditable service for a military leave of absence in accordance with USERRA law. ERS Board policy is to only provide military service for active employment and not routine monthly assignments.
- Removing language regarding refund of military contributions that had applied to members who purchased their military service time prior to 1977. From 1977 through today, the County granted up to four years of prior military service at no cost to the member. The County had offered refunds to members who paid for their military service prior to 1977. This refund language got mixed up with Military Leave of Absence, where members are required to purchase their time in accordance with federal law.
- Clarifying that the correctional officers' and deputy sheriffs' pension benefit applies only to those members who have reached 20 years of creditable service if hired prior to July 1, 2007 or 25 years of creditable service if hired on or after July 1, 2007. Members who don't meet the requisite number of years for the above-mentioned benefit but otherwise qualify for retirement (age 65 with 5 years for members hired prior to July 1, 2007 or age 67 and 10 years for members hired on or after July 1, 2007) are eligible for the General benefit as described in the Editor's note in Sections 5-1-218 and 5-1-219 of the County Code.
- Correcting the vesting language in Section 5-1-203(9)(ii) for members hired on or after July 1, 2007 from 10 years of "membership" service to 10 years of "creditable" service to agree with the termination benefit language in Section 5-1-230(b)(2).

Prepared by: Office of Budget and Finance

**Bill 43-22 (Supplemental Appropriation)****Council District(s) All****Mr. Jones (By Req.)****Department of Health and Human Services****Low Income Household Water Assistance Program**

The Administration is requesting a supplemental appropriation of federal funds totaling \$239,508 to the Low Income Household Water Assistance Program Gifts and Grants Fund program. The Department advised that the funds will be used to hire six temporary employees to assist County households, including homeowners and renters, with determining eligibility and processing the applications for financial assistance through the Low Income Household Water Assistance Program. The Department estimates that it will receive 3,000 applications and will provide a one-time benefit between \$100 to \$2,000 to over 800 County households. See Exhibit A.

**Fiscal Summary**

<b>Funding Source</b>	<b>Supplemental Appropriation</b>	<b>Current Appropriation</b>	<b>Total Appropriation</b>
<b>County</b>	--	--	--
<b>State</b>	--	--	--
<b>Federal <sup>(1)</sup></b>	\$ 239,508	--	\$ 239,508
<b>Other</b>	--	--	--
<b>Total</b>	<u>\$ 239,508</u>	<u>--</u>	<u>\$ 239,508</u>

<sup>(1)</sup> U.S. Department of Health and Human Services, Administration for Children and Families funds passed through the Maryland Department of Human Services. No County matching funds are required.

**Analysis**

The Maryland Low Household Income Water Assistance Program commenced in January 2022 and is managed and operated at the State level in conjunction with local Departments of Social

Services. The program provides benefits for water and wastewater costs for low-income households experiencing hardship with their water bills, focusing on arrearage accounts that are 30 days or more past due. The Department advised that eligible households must be at or below 60% of the State Median Income or already receiving Maryland Energy, Supplemental Nutrition, or Temporary Cash Assistance, or Supplemental Security Income. Eligible households, including homeowners and renters, may receive a one-time benefit between \$100 and \$2,000. The Department anticipates that it will receive 3,000 applications and provide assistance to over 800 County households.

The proposed grant funds will be used to fund six temporary employees through the County's temporary personnel services contracts. The temporary employees will assist County households with determining eligibility and processing the applications for financial assistance. Specifically, the proposed \$239,508 supplemental appropriation be used for service contracts (\$187,972), overtime (\$38,584), office supplies (\$10,000), and FICA (\$2,952). The Department advised that the overtime and FICA are for its current staff who assist with the program.

The grant award provides that funding must be allocated by September 30, 2023. No County matching funds are required.

With the affirmative vote of five members of the County Council, Bill 43-22 will take effect June 19, 2022.

## **EXECUTIVE SUMMARY**

### **Low Income Household Water Assistance Program (LIHWAP)**

#### **Purpose:**

The Baltimore County Department of Social Services has received \$239,508 in administrative funding to assist with the Low Income Household Water Assistance Program. The Department of Social Services will hire six temporary employees through the County's Temporary Personnel contracts. These positions will determine eligibility and process the applications for water assistance. It is projected that 3,000 applications will be received.

#### **History:**

Several major water utilities reported an increase of more than 75% in water bill arrearages since the start of the COVID-19 pandemic. The Maryland Low Household Income Water Assistance Program began in January 2022 and is managed and operated at the state level with local Departments of Social Services. Local Departments of Social Services already administer a wide variety of benefit programs including food and energy assistance. Providing the local office with this funding provides the best opportunity for provision of a one-stop shop for those in need of water and wastewater assistance. This administrative structure also provides enhanced program integrity due to all eligibility work and financial transactions being conducted through centralized state systems.

#### **Eligibility:**

Eligible households must be at or below 60% of the State Median Income or already be receiving Maryland Energy Assistance, Supplemental Nutrition Assistance, Supplemental Security Income or Temporary Cash Assistance. Each eligible household may receive a one-time benefit between \$100 and \$2,000. Both homeowners and renters are eligible for assistance. Arrearages are defined as the amount past-due greater than 30 days.

#### **Funding:**

The Baltimore County Department of Social Services has been awarded \$239,508 in administrative funding. The funding is available through September 30, 2023.

Prepared by: Department of Health and Human Services

FM-2 (Contract)

Council District(s) All


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**Administrative Office**


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**On-Call Grant Writing Services and Support**


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The Administration is requesting approval of a contract with Wallace, Montgomery and Associates, LLP to provide on-call grant writing services for County agencies. The contract commences upon Council approval, continues for 1 year, and will renew automatically for four additional 1-year periods with the option to extend the initial term or any renewal term an additional 180 days. The contract does not specify a maximum compensation for the initial 1-year term or for the entire 5-year and 6-month term, including the renewal and extension periods. Compensation may not exceed the amount appropriated for these services during the entire contract term. The Administrative Office advised that estimated compensation totals \$500,000 for the entire 5-year and 6-month term, including the renewal and extension periods. See Exhibit A.

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**Fiscal Summary**

<b>Funding Source</b>	<b>Total Compensation</b>	<b>Notes</b>
<b>County</b> <sup>(1)</sup>	\$ 500,000	<sup>(1)</sup> General Fund Operating Budget.
<b>State</b>	--	<sup>(2)</sup> Estimated compensation for the entire 5-year and 6-month term, including the renewal and extension periods. The contract does not specify a maximum compensation for the initial 1-year term or for the entire term.
<b>Federal</b>	--	
<b>Other</b>	--	
<b>Total</b>	<u>\$ 500,000</u> <sup>(2)</sup>	

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**Analysis**

The contractor will provide on-call grant writing services to assist County agencies in seeking and applying for federal, State, and local (i.e., nonprofit and private) funding sources. Services include researching grant opportunities; coordinating the acquisition of relevant information from County

agencies; participating in ongoing status meetings and conference calls; writing, revising, and completing grant applications; and monitoring and modifying grant applications.

The Administrative Office advised that the County's funding needs and priorities include:

- community/economic development;
- criminal justice support and technology programs;
- housing and housing programs;
- infrastructure development and maintenance;
- Geographic Information System (GIS);
- information technology;
- recreation and parks programs;
- transportation/highway/transit sustainability;
- workforce development;
- records management;
- senior, family, and youth programs;
- energy efficiency and environmental sustainability; and
- education.

The contractor will be paid a blended hourly labor rate of \$121.88 or \$125.44, depending on whether the contractor or a subcontractor is performing the work.

The contract commences upon Council approval, continues for 1 year, and will renew automatically for four additional 1-year periods with the option to extend the initial term or any renewal term an additional 180 days on the same terms and conditions, unless the County provides notice of non-renewal. The contract does not specify a maximum compensation for the initial 1-year term or for the entire 5-year and 6-month term, including the renewal and extension periods. Compensation may not exceed the amount appropriated for these services during the entire contract term. The Administrative Office advised that estimated compensation totals \$500,000 for the entire 5-year and 6-month term, including the renewal and extension periods. The County may terminate the agreement by providing 30 days prior written notice.

The County awarded the contract through a competitive procurement process based on qualifications and experience from four proposals received. According to the bid documents, there is a 20% MBE/WBE participation requirement per task. The Office of Budget and Finance, Purchasing Division advised that the County expects to award a second contract for these services in the future.

The County's financial system indicates that as of May 1, 2022, Wallace, Montgomery and Associates, LLP has 5 other contracts with the County for various engineering services.

County Charter, Section 715, requires that "any contract must be approved by the County Council before it is executed if the contract is...for services for a term in excess of two years or involving the expenditure of more than \$25,000 per year...."

## EXECUTIVE SUMMARY

The Baltimore County Office of Government Reform and Strategic Initiatives (OGRSI) is seeking one or more on-call grant writers to assist various County offices in seeking and applying for a variety of federal, state, and local funding sources on an as-needed basis. County offices in need of grant writing or seeking services will engage one of the on-call grant writers and provide payment as needed through the office's budget for services rendered. Of the four respondents to the Request for Proposal for on-call grant writing services, the County has chosen Wallace Montgomery and Associates to move forward in the process.

Prepared by: Administrative Office

**FM-8 (Contract Amendment #4)****Council District(s) All**

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**Property Management**

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**Energy Consulting Services**

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The Administration is requesting a fourth amendment to a contract with Enel X North America, Inc. (previously d/b/a EnerNOC, Inc.) to continue to provide energy consulting services for the County. Property Management advised that the proposed amendment is necessary to avoid an interruption in services while a new contract is awarded through the Baltimore Regional Cooperative Purchasing Committee (BRCPC). The proposed amendment extends the contract through the earlier of June 30, 2024 or the date a new contract is executed and provides the FY 2023 monthly fees for the electric consulting and natural gas consulting during the extension period for all participating entities of \$14,000 and \$4,000, respectively; the fees are allocated to the individual participating entities based on each entity's prorated share of energy usage for both electricity and natural gas. Estimated compensation related to consulting services provided for the County (which also includes the costs for BCPL, CCBC, and the Revenue Authority) totals \$39,504 for the 24-month extension period from June 30, 2022 through June 30, 2024, and \$624,863 for the entire approximate 12-year and 7¾-month term, including the renewal and extension periods. The contract commenced November 7, 2011 and expires June 30, 2022. See Exhibit A.

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### Fiscal Summary

<b>Funding Source</b>	<b>Contract Amendment</b>	<b>Current Total Compensation</b>	<b>Amended Total Compensation</b>
<b>County</b> <sup>(1)</sup>	\$ 39,504	\$ 585,359	\$ 624,863
<b>State</b>	--	--	--
<b>Federal</b>	--	--	--
<b>Other</b>	--	--	--
<b>Total</b>	<u>\$ 39,504</u> <sup>(2)</sup>	<u>\$ 585,359</u>	<u>\$</u> <sup>(3)</sup>

<sup>(1)</sup> General Fund Operating Budget (reflect costs for General Government, BCPL, CCBC, and Revenue Authority; the other entities may provide reimbursements to cover their respective costs).

<sup>(2)</sup> Estimated compensation for the additional 2-year term for consulting services provided on behalf of the County (amount does not reflect any additional non-consulting services (e.g., for energy tracking)).

<sup>(3)</sup> Estimated compensation for the entire approximate 12-year and 7¾-month term, including the additional extension period, for services provided on behalf of the County.

### Analysis

Property Management advised that Baltimore County Government is one of the participating entities in the consortium that comprises the Baltimore Regional Cooperative Purchasing Committee (BRCPC) in order to enter into cooperative agreements with the contractor for consulting services related to the purchase of electricity, natural gas, and other energy.

On November 7, 2011, the Council approved the original 10-year agreement with estimated compensation totaling \$319,597 to provide consulting services related to the procurement of electricity and natural gas. Services include energy procurement strategy development and implementation; identification of risk profiles, time frames, and cost targets; procurement of retail suppliers to purchase electricity and natural gas on the wholesales markets; and contract performance monitoring.

On October 21, 2013, the Council approved the first amendment to the contract, increasing the estimated compensation by \$243,601, from \$329,624 to \$573,225, to include energy usage tracking services at seven County buildings (County Office Building, County Courts Building, Historic Courthouse, Public Safety Building, Detention Center, Drumcastle Government Center, and North Point Government Center) to help the County maximize energy cost savings. Compensation for the tracking service was not to exceed \$30,264 per year, plus a one-time

“enablement” fee of \$1,489 for all seven County locations. The Office advised that tracking services at the North Point Government Center ended in December 2015.

On November 7, 2016, the Council approved the second amendment to the contract, increasing the estimated compensation by \$61,680, from \$573,225 to 634,905, for the contractor to continue tracking energy usage at six County buildings and to begin tracking energy usage at the Jefferson Building; the contractor was to replace its original/obsolete software with its new EIS software, which provides enhanced services and additional features for tracking, analyzing, and verifying energy savings. Compensation for the tracking service was not to exceed \$42,000 per year (\$3,500 per month) for all 7 locations, plus a one-time “enablement fee” of \$3,000 for the Jefferson Building.

On November 15, 2021, the Council approved the third amendment to the contract, retroactively extending the contract approximately 7¾ months, from November 7, 2021 through June 30, 2022, with the option to extend the agreement under the same terms and conditions, for each participating entity constituting the BRCPC. Property Management advised that the proposed amendment was necessary to avoid an interruption of services because the BRCPC encountered unforeseen delays in the procurement process that resulted in the delay of a new contract before the expiration of the existing contract; the Office of Budget and Finance advised that a new contract was expected to be awarded in 2022. The proposed amendment changed the combined monthly fees paid among the participating entities to \$15,467 for electric consulting and \$4,430 for natural gas consulting during the extension period. Property Management advised that the fees are allocated to the participating entities based on each entity’s prorated share of energy usage for both electricity and natural gas and are typically adjusted periodically. Property Management further advised that the proposed amendment decreased the County’s prorated share of the monthly rate for electricity and natural gas consulting, from \$1,827 and \$560, to \$1,336 and \$482, respectively, during the 7¾-month extension period. Estimated compensation related to services provided for the County totaled \$14,090 for the additional approximate 7¾-month extension period and \$585,359 for the entire approximate 10-year and 7¾-month term, including the renewal and extension periods.

Property Management advised that the proposed fourth amendment is necessary to avoid an interruption of services due to unforeseen delays in the procurement of a new contract. The proposed amendment extends the current expiration date of June 30, 2022 until the earlier of June 30, 2024 or the date on which a new agreement is executed, and changes the combined monthly fees paid among the participating entities to \$14,000 for electric consulting and \$4,000

for natural gas consulting during the extension period (from the current monthly rates of \$15,467 and \$4,430, respectively). The proposed amendment also decreases the County's prorated share of the monthly rate for electricity and natural gas consulting, from \$1,336 and \$482, to \$1,210 and \$436, respectively, during the 24-month extension period. All other terms and conditions remain the same. The County may terminate the agreement by providing 30 days prior written notice.

The County awarded the original contract through a competitive procurement process based on best value from five proposals received. The Office of Budget and Finance, Purchasing Division advised that the solicitation was a BRCPC effort with the other participating entities entering into their own service agreements with the contractor.

On December 1, 2011, the County Administrative Officer entered into a separate 5½-year agreement with the contractor (at no cost to the County) to participate in the Emergency Load Response/Demand Response Program (DRP), a revenue-generating agreement in which the County receives payments based on a fee-per-kilowatt hour in return for agreeing to reduce electricity consumption at the County locations mentioned above. The agreement expired May 31, 2016. On May 24, 2016, the County Administrative Officer approved an amendment to extend the original term of the DRP agreement by 5 years, to May 31, 2021. The amendment also changed program terms and conditions, and added the Jefferson Building as a program site. The Office advised that revenues generated through the DRP totaled \$125,434.

County Charter, Section 715, requires that "any contract must be approved by the County Council before it is executed if the contract is...for services for a term in excess of two years or involving the expenditure of more than \$25,000 per year...."

## Executive Summary

Property Management is requesting the approval of amendment no. 4 to agreement MA 2045 for Enel X North America, Inc. for energy consulting services. Enel X North America, Inc. and Baltimore Regional Cooperative Purchasing Committee ("BRCPC") entered into an agreement dated November 7, 2011. Baltimore County Government is one of the participating entities in the consortium that comprises the Baltimore Regional Cooperative Purchasing Committee ("BRCPC") in order to enter into cooperative agreements with the Contractor for consulting services related to the purchase of electricity, natural gas, and other energy.

The leading entity, BRCPC, is responsible for the procurement of a new contract and has encountered some unforeseen delays in the procurement process that has resulted in a delay of a new contract before the expiration of the existing contract. This amendment extends the current expiration date of June 30, 2022 until the new agreement is in place to avoid a lapse in service.

The Contractor shall be paid the combined total sum of One Thousand Two Hundred and Ten Dollars and No Cents (\$1,210.00) per month for electric consulting and Four Hundred and Thirty-Six Dollars and No Cents (\$436.00) per month for natural gas consulting (collectively, the "Fee") during the extended Term period of July 1, 2022 to June 30, 2023.

Prepared by: Property Management

**FM-9 (Contract Amendment #1)****Council District(s) All****Office of Law****Legal Services**

The Administration is requesting approval of an amendment to a contract with Nelson Mullins Riley & Scarborough LLP to continue to provide outside legal counsel with respect to class action litigation filed against the County. The proposed amendment increases the maximum compensation by \$750,000, from \$450,000 to \$1,200,000, for the entire contract term. The contract commenced November 1, 2021. See Exhibit A.

**Fiscal Summary**

<b>Funding Source</b>	<b>Contract Amendment</b>	<b>Current Maximum Compensation</b>	<b>Amended Maximum Compensation</b>
<b>County</b> <sup>(1)</sup>	\$ 750,000	\$ 450,000	\$ 1,200,000
<b>State</b>	--	--	--
<b>Federal</b>	--	--	--
<b>Other</b>	--	--	--
<b>Total</b>	<u>\$ 750,000</u>	<u>\$ 450,000</u>	<u>\$ 1,200,000</u> <sup>(2)</sup>

<sup>(1)</sup> Self Insurance Fund.

<sup>(2)</sup> Maximum compensation for the entire contract term.

**Analysis**

The contractor serves as co-lead counsel for the County with respect to Fair Labor Standards Act (FLSA) class action litigation currently pending before the U.S. District Court for the District of Maryland. Representation will include all matters preparatory to and including litigation. The contract provides that the County will work cooperatively with the contractor to provide the necessary information and materials, and the County will make business and technical decisions as it deems appropriate.

The Office advised that due to the complex and time-intensive nature of the litigation, the volume and nature of the services exceeded the reasonable expectations of the parties at the time of entering into the agreement, including a number of factors beyond the parties' control. The Office further advised that discovery in this matter has caused the litigation to be far more extensive in scope and cost than initially contemplated, requiring an increase in the value of the contract. The Office also advised that the contractor anticipates that legal fees and expenses could increase by up to an additional \$750,000.

On November 1, 2021, the Council approved the original contract not to exceed \$450,000, which continues through the completion of the litigation, including any and all appeals. The proposed amendment increases the maximum compensation by \$750,000, from \$450,000 to \$1,200,000, for the entire contract term. All other terms and conditions remain the same. The County may terminate the agreement by providing 30 days prior written notice. The Office advised that approximately \$439,686 has been expended to date on services.

The County awarded the original contract as a noncompetitive 902(f) award secured in the best interest of the County because it does not have available in-house attorneys with the requisite subject matter expertise. The Office further advised that due to the need to conduct extensive discovery and prepare motions, there was insufficient time to initiate a competitive procurement process.

County Charter, Section 902(f), states that "when... [competitive] bidding is not appropriate, a contract shall be awarded only by competitive negotiations, unless such negotiations are not feasible. When neither competitive bidding nor competitive negotiations are feasible, contracts may be awarded by noncompetitive negotiations."

County Charter, Section 510 states "nothing in this article shall be construed as preventing the county executive, with the approval of the county council, from engaging the services for a temporary period of any attorney or attorneys for legal work of an extraordinary nature when the work to be done is of such character or magnitude as to require legal services in addition to those provided by the regular staff of the Office of Law."

County Charter, Section 715, requires that "any contract must be approved by the County Council before it is executed if the contract is...for services for a term in excess of two years or involving the expenditure of more than \$25,000 per year...."

### **Executive Summary**

The Administration is requesting approval of an amendment to a contract with Nelson Mullins Riley & Scarborough, LLP who is currently serving as co-lead counsel for the County with respect to Fair Labor Standards Act (FLSA) class action litigation currently pending before the U.S. District Court for the District of Maryland. The contract commenced on November 1, 2021 and continues through the completion of the litigation, including any and all appeals. Compensation currently may not exceed \$450,000 for the entire contract term.

Due to the complex and time-intensive nature of the litigation, the volume and nature of the services exceeded the reasonable expectations of the parties at the time of entering into the agreement, including a number of factors beyond the parties' control.

The Contractor anticipates that legal fees and expenses could increase by up to an additional \$750,000. As a result, the amendment would increase the not to exceed sum to \$1,200,000.

Prepared by: Office of Law